

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
BRYSON CITY DIVISION  
2:12-cv-02

WILLIAM J. MOSS, III, and JUDY R. MOSS,  
Plaintiffs, and  
JUDITH TYNDAL,  
Intervenor Plaintiff,  
v.  
PAMELA S. NELLIS, WILLIAM R. NELLIS, and THE BIRCHES OF WILDCAT CLIFFS, LLC, NELLIS REALTY, LLC,  
v.  
Defendants and Third Party Plaintiffs,  
v.  
LE BON TEMPS ROULE', LLC d/b/a APPALACHIAN GOLF CARS, LLC and WILLIAM TYNDAL,  
Defendants.

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ORDER

**THIS MATTER** is before the Court *sua sponte* to ascertain subject matter jurisdiction.

In the plaintiffs' Complaint it is alleged that the Birches of Wildcat Cliffs,

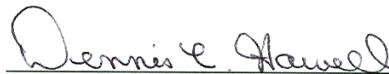
LLC is a corporation organized under the laws of the state of North Carolina and the defendant Nellis Realty, LLC is a corporation organized under the laws of the state of North Carolina. (Comp., ¶¶ 5 & 6) It is admitted in the Answer of the third-party defendant Le Bon Temps Roule', LLC d/b/a Appalachian Golf Cars, LLC that Le Bon Temps Roule', LLC is a North Carolina Limited Liability Company which does business under the assumed name of Appalachian Golf Cars, LLC. (Answer to Third-Party Comp. on behalf of Le Bon Temps Roule', LLC, #36, ¶ 11)

Courts have an affirmative duty to question subject matter jurisdiction even when the parties have not done so. Interstate Petroleum Corp. v. Morgan, 249 F.3d 215 (4<sup>th</sup> Cir. 2001); Plyer v. Moore, 129 F.3d 728, 732 n.6 (4th Cir. 1997), *certiorari denied* 524 U.S. 945, 118 S.Ct. 2359, 141 L.Ed.2d 727 (1998); 28 U.S.C. §1447(c)("If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."). A limited liability company is a citizen of all states in which its constituent members are citizens. Carden v. Arkoma Associates, 494 U.S. 185, 110 S.Ct. 1015, 108 L.Ed.2d 157 (1990). The defendants, in their Answer, and the third-party defendants have not disclosed whether they have constituent members or partners and the citizenship of those members or partners and therefore will be required to do so.

**IT IS, THEREFORE, ORDERED** that on or before **September 21, 2012**,

the defendants The Birches of Wildcat Cliffs, LLC and Nellis Realty, LLC and the third-party defendant Le Bon Temps Roule', LLC d/b/a Appalachian Golf Cars, LLC shall file a response disclosing the names and citizenships, if any, of all the constituent members or partners of the above referenced LLC's, including Appalachian Golf Cars, LLC which is referenced in the pleadings, and, for any such constituent members or partners that are limited liability companies or partnerships, to identify the citizenships of the respective constituent members or partners until all such constituents are fully identified.

Signed: September 5, 2012



Dennis L. Howell  
United States Magistrate Judge

